DECLARATION OF ROBERT A. LYNCH

I, ROBERT A. LYNCH, declare:

1. I am a resident of the County of Ventura, State of California and am over the age of eighteen years. If called as a witness I could and would testify competently stated hereinbelow. I am, individually, and as a trustee, a Plaintiff in the above-entitled action.

2. My date of birth is November 26, 1929. I am 62 years old. I have been married to my wife, BETTY LAVERNE LYNCH, for forty four (44) years.

3. I only attended school to the ninth (9th) grade. I did not graduate high school. I have not attended any colleges. I do not have any degrees or special training from any institutions of higher learning.

4. Prior to meeting MR. ROBERT CARTY, Defendant, and prior to his misdeeds which are the subject of the litigation now pending, I never had a securities account at any brokerage house or any other institution. Indeed I never, prior to meeting MR. CARTY, ever executed any stock broker agreements, brokerage house agreements or any other agreements of the type alleged to exist by the Defendants.

5. I first had contact with MR. CARTY in approximately 1988. I met MR. CARTY through his brother in Santa Barbara from whom we were purchasing a car owned by MR. CARTY. In the context of that brief transaction, I now see, in retrospect, the beginning of what became a massive fraud upon me and my wife, taking from us much of our retirement and security. As I look back, I now see what was not clear at the time: MR. CARTY carefully and precisely manipulated himself into becoming what we believed to be a very close friend and confidante. MR. CARTY, through his careful manipulative schemes, encouraged me to repose in him the highest degree of trust

and confidence, and caused our relationship to be such that he was trusted absolutely and unquestioningly.

6. MR. CARTY, in the context of our acquisition of the car through his brother, first started talking to me in general terms about business. He, in the course of these initial discussions, presented himself as being associated with well established multi-generational Ventura County families with whose names I was well familiar. MR. CARTY explained that his grandfather was closely associated with and personal friends with Martin Smith, the well known Oxnard developer. MR. CARTY also told me that he was married to the daughter of Mr. Ted Engs, of Engs Peterbilt — another well-established Ventura and Los Angeles County family. In this context, MR. CARTY explained his business. What MR. CARTY told me was that much like Mr. Smith knew how to develop property and Mr. Engs knew how to sell and maintain trucks, MR. CARTY knew how to manage people's money safely and prudently. MR. CARTY explained in the beginning of our relationship and repeated throughout the relationship, that he was an expert in safely managing people's money and that he had the trust and confidence of many successful people — again alluding to his family relationships with Mr. Smith and Mr. Eng.

7. At the beginning of the relationship, MR. CARTY presented himself as someone who wanted to become a personal friend. He did not specifically discuss managing or taking care of our retirement funds or money. Instead he spent considerable time befriending himself to me. He would come by my office or house as often as two (2) times per week. He would, from time to time, take me to lunch, including lunch at the Tower Club at the top of the Union Bank Building. We would sit at what MR. CARTY described as "Mr. Smith's private table".

8. In the course of these many conversations, long before

MR. CARTY obtained possession of our funds, I would tell MR. CARTY that I had no experience in stocks, no experience in bonds, no experience in mutual funds or any other kind of activity that he was describing. I told him I was "completely green" and had no prior experience and thus did not understand most, if not all, of what he was discussing. MR. CARTY would, on those occasions, again reiterate that managing money safely was his business and that's what he was an expert in, while other people had other aspects of business with which they were successful.

9. In the course of what was, I thought at the time, a developing close friendship, I related to MR. CARTY that in essence I was self made. I had built, from scratch, a cement business which involved the selling of cement. I also related to MR. CARTY, as time passed, that there was a buyer interested in buying the business and that my wife and I were very seriously considering selling the business, paying the taxes and then putting away what was left in safe investments for our retirement and our children. MR. CARTY, I now can see in retrospect, become extremely solicitous at the point in time I mentioned the sale of the business. Indeed, in retrospect I can see that he substantially increased his subtle, but very effective, pressure toward increasing friendship and trust.

10. Finally, the business was sold and the taxes paid. Our share sale proceeds was approximately Five Million Dollars ($5,000,000.00) before taxes. Certainly this amount of money was not insubstantial and I recognized that it needed to be carefully, prudently and safely invested for my future, my wife's future and our children. In this context, MR. CARTY asked me, as a friend, to become the manager of these funds for my wife and my family.

11. At the time we had the funds from the sale of the business in our possession, we discussed with MR. CARTY, his suggestion and request that he become, as a friend, the

manager of our family's future. I explained to MR. CARTY that it was absolutely essential that the funds be carefully, prudently and safely managed. I explained to MR. CARTY that, in essence, I was unwilling to take any risk that would put in jeopardy in any significant form, the principal of our funds which were the future of our retirement and inheritance to our children. I told MR. CARTY that safety was critical in any money management that he would undertake. I again reiterated to MR. CARTY that I had absolutely no prior experience at all in dealing with brokerage houses, stock brokers, stock, bonds, or any of the other things that he would talk about as his "business and profession". MR. CARTY told my repeatedly and in the context of these discussions that I should trust him, that I could trust him, and that I should rely upon his expertise and management skills both as a friend and as a professional.

12. After these discussions with MR. CARTY, I agreed that he would become our family's money manager in the context of preserving the funds for the future, while at the same time, accumulating interest so that it would grow toward our retirement and ultimately, the inheritance for our children. In this context, MR. CARTY came to my wife and I and told us, as we were having the funds transferred to him, that he needed some "form" documents signed in order to open the account. MR. CARTY told me that the documents we needed to sign were "standard" and were "simply a formality" to open the account to effect the transfer of the funds to him for safe management. He told me, in sum and substance, that it was not necessary to read the documents since they simply effected an opening of the account and the transference of the funds to him. In this context, MR. CARTY repeatedly stressed that I could trust him. On that basis and trusting MR. CARTY as a friend, which he knew and encouraged, I signed then and throughout the relationship whatever documents MR. CARTY put in front of me from time to time. I did not read the documents and was

discouraged from doing so by MR. CARTY. Indeed, MR. CARTY knew that I probably would not have understood them even if I had read them. MR. CARTY told me repeatedly each time documentation was brought to us to sign, that they were simply forms, tax papers or formalities that were "standard" and needed to be signed for the continuing management of our family funds by him. Indeed, over the history of our relationship with MR. CARTY, he would, at various times, come to us to have us sign documentation. Each time he would do so he would reiterate the closeness of our friendship, reiterate his expertise and skill in managing money and, indicate that he simply needed "our signature" on a "standard" document that was a "formality" so that he could continue to manage our retirement and family monies safely and prudently.

13. At no time, ever, in the course of any conversation with MR. CARTY or anyone else was I ever told that the documentation MR. CARTY was having me sign, which he said was "standard" and a "formality" contained an arbitration clause. At no time did MR. CARTY or any other person on behalf of any Defendant in this action ever advise me that the "standard" and "formality" documentation that he was having me sign without reading contained any limitation on rights of recovery. At the time MR. CARTY had me sign documentation of any sort, I was told they were "standard" and "formality", I was not told that the documents actually constituted a contract and that there were any terms which would be deemed to be terms of a contract so as to limit any rights that I might have. If I had known and understood the arbitration clause no sought to be enforced by Defendants, and about the limitation of my rights of recovery contained in the arbitration clause, I would not have executed the documents.

14. As a result of the mismanagement of our retirement and family funds by MR. CARTY, the funds have been

substantially dissipated. Indeed, it is now my understanding that we have lost well over one-half (½) of our funds directly from the mismanagement, churning and improper handling of our funds by MR. CARTY and the brokerage houses with which he worked. At the same time, I now believe that in fact commissions were generated to MR. CARTY and the brokerage house, as best I can tell, somethere close to or in excess of One Million Dollars ($1,000,000.00). Our hoped for retirement and future has now turned into an absolute nightmare.

15. I have had an opportunity to review the declarations that have been presented by the Defendants in this matter. The following matters are respectfully submitted to this Court:

(a) The claim by MR. CARTY of his denial of Paragraphs 11 and 14 of the Complaint is untrue. MR. CARTY affirmatively and specifically discouraged any reading of documents repeatedly referring to our "friendship" and the level of trust that had developed. Indeed, I have a specific recollection that at one time when MR. CARTY told me I needed to sign a document the following conversation took place, in sum and substance:

> "CARTY: These are the documents I need for you to sign so I can manage your money for you. Don't worry about the documents, they're formalities, just go ahead and sign them."
>
> ROBERT LYNCH/BETTY LYNCH: Okay — we trust you.
>
> ROBERT LYNCH: (Jokingly) I hope I am not signing my life away.
>
> CARTY: (Laughing) No — they're just a formality, they're not important."

(b) I have read the declaration of Marilyn France. I have never spoken with Marilyn France. I have never met Marilyn France. If she walked into a room in which I was sitting, I would not know who she is. I have never received a letter from Marilyn France.

16. I ask this Court to permit us to remain in this Court and present our grievances before twelve (12) members of our community.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12 day of February, 1992 at Ventura, California.

ROBERT A. LYNCH

DECLARATION OF BETTY LAVERNE LYNCH

I, BETTY LAVERNE LYNCH, declare:

1. I am a resident of the County of Ventura, State of California and am over the age of eighteen years. If called as a witness I could and would testify competently to the matters stated hereinbelow. I am a Plaintiff, individually and as trustee, in the above-referenced litigation.

2. My date of birth is May 9, 1930. I am 61 years of age. I graduated high school in 1948. I have never had any college education. After high school I attended a trade school to learn shorthand and typing.

3. I have reviewed the declaration of my husband, ROBERT A. LYNCH, filed concurrently herewith. It is true and correct in its entirety.

4. Most of our funds for retirement and for passing on to our children have now been lost due to MR. CARTY and his improper conduct. I was present when various of the conversations between MR. CARTY and my husband took place concerning the documents. MR. CARTY repeatedly told us that any document papers were simply "formality" so that he could "manage our money". He referred to the forms as "standard forms" or "standard documents" that were "formality" and that we did not need to worry about them or what they said.

5. I also remember the specific conversation with MR. CARTY at one point when documents for our signature were being presented and I specifically remember MR. CARTY stating, "These are things that need to be signed for him to continue to manage the funds. Don't worry about them, just sign them." I also specifically recall my husband jokingly commenting, as he was signing, "I hope I am not signing my life away" and MR. CARTY laughing and saying, "No — they're just a formality and they're not important."

6. At no time would I have executed documents if I had known they contained a limitation on my legal rights as now asserted by Defendants. For MR. CARTY to state, as he does in his declaration that he did not tell us that we didn't need to read the documents, that they did not affect our legal rights or, that they were just "formality" and "standard" is an absolute lie by him.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of February, 1992 at Ventura, California.

BETTY LAVERNE LYNCH

DECLARATION OF JAN CORWIN LINDSAY

I, JAN CORWIN LINDSAY, declare:

1. I am a resident of the County of Ventura, State of California. I am over the age of eighteen years and if called as a witness could and would testify competently to the matters stated hereinbelow.

2. I am a Certified Public Accountant in the State of California and have been so certified since 1973. I have, on a number of occasions testified before the Superior Court of the State of California for the County of Ventura on various matters as an expert witness.

3. At the request of Peter A. Goldenring, counsel for Plaintiffs, I made inquiry to various sources, including the board of governors of the federal reserve system, as well as various other publications available to Certified Public Accountants on certain economic issues relevant to this action. My findings, on specific inquiries by Mr. Goldenring are delineated below.

4. The first question I was asked by Mr. Goldenring was, as best as could be determined from generally available public information for accountants and economists what were the total number of offices of the top twenty five (25) brokerage firms in the United States. I determined that the most current data in this regard that could be obtained was as of January 1, 1989. Total offices for retail outlets for brokerage firm as of that date was three thousand three hundred fifty one (3,351).

5. The next question I was asked was for a ranking of the top six (6) brokerage firms in terms of number of offices. The ranking is as follows:

Brokerage Firm	Number of Offices
Dean Witter	692
Shearson Lehman	613

Brokerage Firm	Number of Offices
Merrill Lynch	550
A.G. Edwards	368
Prudential Bache	336
Paine Webber	296
Oppenheimer	78
Total	2,933

Accordingly, of the total of three thousand three hundred fifty one (3,351) offices, the top seven (7) brokerage firms comprise two thousand nine hundred thirty three (2,933), for a total of eighty seven percent and one-half (87½%).

6. I was asked, in terms of the number of registered representatives (stock brokers) the total number in the industry, as well as the ranking for the top seven (7) brokerage houses. I determined that as of January 1, 1989, the most recent data I was able to locate, the total number of brokers was fifty eight thousand three hundred eight three (58,383). The ranking of the top seven (7) brokerage houses was as follows:

Brokerage Firm	Number of Brokers
Merrill Lynch	12,600
Shearson Lehman	11,284
Dean Witter	7,725
Prudential Bache	5,876
Paine Webber	4,595
A.G. Edwards	3,402
Oppenheimer	688
Total	46,170

Of the total number of registered representatives of fifty eight thousand three hundred eight three (58,383), the top seven (7) brokerage houses total forty six thousand one hundred seventy (46,170) for a total of seventy nine and eight one hundredths percent (79.08%).

7. The information and data relied upon by me was obtained from industry survey data issued by the securities industry and published by them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of February at Ventura, California.

JAN CORWIN LINDSAY

DECLARATION OF PETER A. GOLDENRING

I, PETER A. GOLDENRING, declare:

1. I am an attorney licensed to practice law in the State of California and am a member of the law firm of Goldenring and Goldenring, A Professional Law Corporation, counsel of record for Plaintiffs herein. If called as a witness I could and would testify competently to the matters stated hereinbelow.

2. This Court has before it a request by Defendants to remove Plaintiff and their claims from the judicial system and place them in an arbitration process that is controlled and regulated by the securities industry itself. In other words, this court is being asked to place its stamp of approval on sending Plaintiffs into the den of wolves where they are to receive "justice."

3. The following facts are relevant for this Court's determination:

(a) As set forth in the Memorandum of Points and Authorities, there are essentially two (2) grounds upon which this court properly denies the Petition. The first and most direct is pursuant to *Strotz v. Dean Witter Reynolds* (1990) 223 Cal. App. 3d, 208, 207 Cal. Rptr. 680. It is clear under that case that arbitration in the instant matter is simply inappropriate and precluded as a matter of law.

(b) The second ground upon which this Court should deny the Motion to Compel Arbitration is under California's law governing adhesion contracts. As discussed in the memorandum of Points and Authorities following, it is California law, not federal law, which governs the enforceability of the subject contract. It is California law, not federal law, which measures whether or not the contract is an adhesion contract and, then upon that finding, determines whether or not the specific provision to arbitrate will be enforceable as a matter of public policy. California law as set forth in the

Memorandum of Points and Authorities hereafter, articulates quite clearly that when a consumer has no choice of any significance in the industry, that lack of choice, through effectively an anti-trust analysis, precludes enforcement of the "adhesion contract".

4. In the instant matter, the Defendants in their Motion and presumably in their Reply, will go to great lengths to discuss federal law. It is important to note that the federal laws cited all predate what has most recently, within the last two (2) years, occurred in the securities industry. Within the last two (2) years, the securities industry as a whole and nearly uniformly, has included in its "standard account documents", arbitration clauses. The arbitration clauses from the various brokerages are astroundingly identical in their language. Moreover, the entire brokerage securities industry has now adopted a posture that the "arbitration provision" is included in its standard documents. Thus, any member of the public wishing to open or maintain a securities brokerage account, be it for a money market fund, putting in securities inherited from grandma, or any other purpose, must effectively waive all access to the Judicial Courts of the State of California. While it is not possible to present to this Court every single "standard" contract by a brokerage house, a majority are presented herewith, representing well over ninety plus percent (90+%) of the stock brokers and offices of stock brokers in the State of California and indeed, the Country, as follows:

(a) Paine Webber Client Agreement, Exhibit A attached hereto and incorporate herein by this reference. The Paine Webber arbitration clause is paragraph 19.

(b) Merrill Lynch Pierce Fenner and Smith. A true and correct copy of the Merrill Lynch Pierce Fenner and Smith Open Account documentation is attached hereto marked Exhibit B and incorporated herein by this reference. The arbitration clause in this document is paragraph 11.

(c) Shearson Lehman Brothers. A true and correct copy of the Shearson Lehman Brothers "Client Agreement" is attached hereto, marked Exhibit C and incorporated herein by this reference. The "arbitration clause" is paragraph 23.

(d) Prudential-Bache Securities. A true and correct copy of the Prudential-Bache client opening account agreement is attached hereto and marked Exhibit D and incorporated herein by this reference. The arbitration agreement in the Prudential-Bache document is paragraph 11.

(e) Dean Witter Reynolds, Inc. A true and correct copy of the Dean Witter Reynolds, Inc. Customer Agreement is attached hereto, marked Exhibit E and incorporated herein by this reference. The arbitration provision is set forth in paragraph 13 of this document.

(f) A.G. Edwards & Sons, Inc. A true and correct copy of the A.G. Edwards & Sons, Inc. Customer Agreement is attached hereto, marked Exhibit F and incorporated herein by this reference. The arbitration agreement is contained in paragraph 7 of the A.G. Edwards documentation.

(g) Oppenheimer & Company, Inc. A true and correct copy of the Oppenheimer & Company, Inc. "Client Agreement" is attached hereto, marked Exhibit G and incorporated herein by this reference. The arbitration provision is contained at paragraph 26 in this document.

5. The Court will note that with uniformity each and every brokerage house has, in its "standard" documentation an arbitration agreement. The Court will also note that the arbitration agreement languages are essentially identical and indeed, the arbitration language that the Defendant seeks to enforce herein is essentially identical to the language in the Exhibits referenced.

6. Throughout the Petition and Motion to Compel Arbitration filed by the Defendants, there is the implied claim that the "arbitration" is a fair and evenhanded procedure.

This is simply not the case and indeed, the arbitration as proposed is so one-sided as to constitute a complete abrogation of the rights of Plaintiff. The true facts concerning the arbitration are as follows:

(a) The arbitration clause sought to be enforced effectively contains within it, without disclosure, a limitation on rights of recovery and the ability of the arbitrators to award damages. Under New York Law governing these agreements, punitive and exemplary damages are generally not recoverable. The arbitration clause Defendant seeks to enforce and indeed, the arbitration clauses uniformly, do not disclose this limitation of rights. Thus, damages for willful misconduct and intentionality are precluded. This is significant for, under California Law, as set forth in the Memorandum of points and Authorities attached hereto, the stock broker (Defendant CARTY) and the brokerage houses are fiduciaries to Plaintiff, standing in the highest degree as that term and relationship. (See *Twomey v. Mitchum, Jones & Templeton, Inc.* [1968] 262 Cal. App. 2d. 690, 69 Cal Rptr. 22).

(b) Under the terms of the arbitration clause sought to be enforced, whichever one it might be, the arbitration is to take place before one of the securities organizations and trading forums such as the New York Stock Exchange (NYSE), or, under the auspices of the National Association of Securities Dealers (NASD). Of course, this Court is well familiar with the Exchanges, such as the New York Stock Exchange and the American Stock Exchange. The National Association of Securities Dealers is an association of stock brokers and brokerage houses, by stock brokers and brokerage houses, and for stock brokers and brokerage houses.

It is noteworthy that in drafting the arbitration clause sought to be enforced by Defendants herein, and indeed in all of the arbitration clauses that are used industry-wide as set forth in the Exhibits, not a single brokerage house

includes the American Arbitration Association (AAA) or any other independent tribunal. The only arbitration tribunals permitted under the proposed arbitration clause and in the industry's arbitration clauses now universally imposed upon members of the public are industry-controlled entities.

7. With respect to the arbitration as governed by the NYSE or the NASD, there is absolutely no provision for any enforceable discovery. While there are certain "voluntary" exchanges of documents, no depositions are permitted, no compelling of documents prior to proceedings can effectively occur and indeed, none of this discovery ever takes place in the industry-sponsored arbitration forum. Given that circumstances, Defendants have all the information and Plaintiff none. The right to discovery is critical for Plaintiffs. Indeed, as is the case now across the board in the industry, the industry is effectively seeking to preclude discovery of its workings and fraudulent practices on consumers by now attempting to force consumers, through the adhesion contract, into industry arbitration where no discovery is permitted. The attitude of the Defendants has already been exhibited. Your declarant has caused to be served on Defendants a request for deposition of corporate designee and production of documents thereat. These requests included designation of a corporate designee deponent on the subject matter of the arbitration agreements and their usage, as well as seeking production of pertinent documentation associated therewith. Defendants have refused to comply with this discovery, have advised that they will not attend the deposition and have categorically stated that the "requests" are in violation of the preclusion of discovery in the arbitration they seek to enforce.

8. Then, of course, the question need be asked, who are the arbitrators. The arbitrators, not surprisingly, consist of securities industry associated individuals. One of the three arbitrators must be an active securities representative. The

other two are defined as members of the "public". Yet, the definition of the "public" includes an individual who has been for his entire life in the securities industry but retired for at least three (3) to five (5) years. This is hardly a legitimate forum for arbitration. In the context of an adhesion contract, public policy must absolutely preclude enforcement of a one-sided arrangement as Defendant seeks to use on Plaintiffs and now in an increasingly broad spectrum, all members of the public.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of February, 1992 at Ventura, California.

PETER A. GOLDENRING